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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|------------------|
| 10/673,800  | 09/29/2003  | Adam D. Straus       | 266-2                           | 2981             |
| 24336   | 7590        | 04/28/2006           |                                 |                  |
| KEUSEY, TUTUNJIAN & BITETTO, P.C.<br>20 CROSSWAYS PARK NORTH<br>SUITE 210<br>WOODBURY, NY 11797 |             |                      |                                 |                  |
|   |             |                      | EXAMINER<br>ALEXANDER, REGINALD |                  |
|   |             |                      | ART UNIT<br>1761                | PAPER NUMBER     |

DATE MAILED: 04/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/673,800

Applicant(s)

STRAUS ET AL.

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20 and 22-27 is/are rejected.
- 7) ☒ Claim(s) 7 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims there is recited an “adjustable fan blades”, but there is recited no structure which would make the blades adjustable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1, 2, 4, 6, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schroeder.

There is disclosed in Schroeder a pinwheel, comprising: a first axis 20, which supports a hub 12, a plurality of protrusions (blades) 13, 14, 15 connected to the hub and radially extending therefrom, and candy items 40 attached to the plurality of protrusions; wherein the hub is formed into a figure (circular figure), the first axis is provided by an axel connected to a platform (handle) and the hub and blades could spin if fitted loosely enough together.

Claims 16, 17, 19, 22, 23 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Bueno Ceresuela.

There is disclosed in Ceresuela a pinwheel lollipop, comprising: a hub having a plurality of spokes (blades) extending radially therefrom, each spoke comprising a candy item, a motor 4 for spinning the hub and a finger driven mechanism 7, 13 for spinning the hub.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Exline et al.

Exline discloses that it is known in the art to provide a detachable advertising item (tag or marking) on the hub of a pinwheel.

It would have been obvious to one skilled in the art to provide the hub of Schroeder with the advertising item taught in Exline, in order to promote to the user.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bueno Ceresuela in view of Exline et al.

It would have been obvious to one skilled in the art to provide the hub of Ceresuela with the advertising item taught in Exline, for the reasons disclosed in the rejection above.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Weber et al.

Weber discloses that it is known in the art to provide a light source to a candy item.

It would have been obvious to one skilled in the art to provide the device of Schroeder with the light source disclosed in Weber, in order to illuminate the candy item for display purposes.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bueno Ceresuela in view of Weber et al.

Weber discloses that it is known in the art to provide a light source to a candy item.

It would have been obvious to one skilled in the art to provide the device of Ceresuela with the light source disclosed in Weber, in order to illuminate the candy item for display purposes.

Claims 8, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Bueno Ceresuela.

Ceresuela discloses the use of a motor 4 and finger driven mechanism 7, 13 to spin the hub of a pinwheel.

It would have been obvious to one skilled in the art to provide the device of Schroeder with the motor and finger driven mechanism of Ceresuela, in order to drive the hub and blades to rotate.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Chiu.

Chiu discloses the use of illuminating members on the blades of a pinwheel.

It would have been obvious to one skilled in the art to provide the pinwheel of Schroeder with the illuminating members taught in Chiu, in order to create an aesthetically pleasing view when the pinwheel is used.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bueno Ceresuela in view of Chiu.

Chiu discloses the use of illuminating members on the blades of a pinwheel.

It would have been obvious to one skilled in the art to provide the pinwheel of Ceresuela with the illuminating members taught in Chiu, in order to create an aesthetically pleasing view when the pinwheel is used.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Lee.

Lee discloses that it is known to have a device which makes sounds when a pinwheel is spinning.

It would have been obvious to one skilled in the art to provide the pinwheel of Schroeder with the sound producing device taught in Lee, in order to provide an audio form of entertainment to the user.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bueno Ceresuela in view of Lee.

Lee discloses that it is known to have a device which makes sounds when a pinwheel is spinning.

It would have been obvious to one skilled in the art to provide the pinwheel of Ceeresuela with the sound producing device taught in Lee, in order to provide an audio form of entertainment to the user.

***Allowable Subject Matter***

Claims 7 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Liaw, Coleman et al. and Dee are cited for their disclosure of the state of the art.

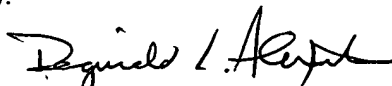
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla  
24 April 2006

  
Reginald L. Alexander  
Primary Examiner  
Art Unit 1761